92-905

Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

October Term, 1992

MAYFLOWER INTERNATIONAL COMPANY dba HONSEW, INC., a Hawaii Corporation; TSUNG HAI LIN aka THEODORE T. H. LIN and MAY KWONG,

Petitioners,

vs.

PAUAHI ASSOCIATES, a Hawaii General Partnership,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of The State Of Hawaii

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Is it a violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States of America for a State to require a deposit of disputed rental amounts into a landlord-tenant rent trust fund, without a probable cause hearing, as a precondition for a tenant to be allowed to have a judicial determination and trial as to whether it has breached a lease agreement and has the right to remain in possession of the premises and to assert any defenses and offsets that it may have with respect to any rental amounts actually owed for the purpose of determining its right to possession under its lease agreement?

IDENTIFICATION OF PARTIES

The Parties to the proceedings below are listed in the front caption to this Petition.

Petitioner Honsew, Inc., has no parent or subsidiary companies. It is not known whether Respondent Partnership has any parent or subsidiary companies.

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DECISIONS BELOW

This Petition seeks review by certiorari of a Memorandum Opinion of the Hawaii Supreme Court entered on August 26, 1992, affirming the Judgment of a State District Court which had entered judgment for possession of leased premises in favor of Respondent on October 9, 1990, following Petitioners' inability to deposit disputed rents in the amount of $134,650.64 into Court as a precondition for any trial on the rent issues.

None of these decisions to Petitioners' knowledge was published.

These decisions are set forth in Appendices 1 and 2 of this Petition in their entirety.

I

JURISDICTIONAL STATEMENT

The decision of the Hawaii Supreme Court, the highest Court of the State, sought to be reviewed, was entered on August 26, 1992, within the time period for filing this Petition with this Court.

No rehearing before the Hawaii Supreme Court was requested.

This Petition is brought pursuant to 28 U.S.C. § 1257.

II

STATEMENT OF THE CASE

In 1984, the Legislature of the State of Hawaii passed the RENT TRUST FUND STATUTE, known as Section 666-21 in the Hawaii Revised Statutes, the full text of which is set forth in Appendix 3 to this Petition. That law requires tenants to post the full amount of any disputed rent as a *precondition* for being allowed to have a trial on the merits in opposition to a landlord's eviction claims, and not even a probable cause hearing is first allowed.

In other words, if you claim that you do not owe your landlord any rent, by way of offset or calculation, in Hawaii your landlord automatically is allowed to toss you out on the street unless you post the amount of the disputed rent in order to *merit* a trial, whether you ultimately are found to owe the landlord anything or not.

No other State has or has ever had such a statute.

While the State of Hawaii does allow the tenant to pursue any claims for breach of the lease *separately*, usually in its Circuit Courts, which takes considerably longer, the landlord is allowed to pursue its claims for summary possession in the District Courts, of inferior jurisdiction, which usually allow the landlord a trial in a matter of weeks *if* the tenant is able to post the disputed rent *first*.

Perhaps such a statute might work reasonably well as a practical matter, in small residential lease disputes, where rental payments may be small and the legal issues narrow and the witness list short; it is obvious that *in*

commercial lease disputes such a precondition to adjudication might be highly unfair and prejudicial.

Petitioners operated a manufacturing company with over 100 employees; in the garment business, their ability to fill their seasonal orders in a timely manner was crucial to their finances. Fabric had to be ordered well in advance, orders secured months in advance, employees retained at peak times, credit prearranged. Petitioners were induced to move their manufacturing operation to Respondent's new Center, with promises written into their new lease of reimbursement for tenant improvements and early move-in times, consistent with their manufacturing needs.

Petitioners however were forced to move into uncompleted space, to spend $100,000 themselves for such self-help measures as temporary electricity and air-conditioning vital to employee safety, and they made leasehold improvements in excess of $170,000. Also, they sustained losses in excess of $3,000,000 due to Respondent's breach of the terms of the written lease, as they were unable to fill orders in a timely manner.

Accordingly, Petitioners sued Respondent and its principals in First Circuit Court in Honolulu, for damages and as an offset to their rental obligations, on May 9, 1990, but the Respondent then ran to Honolulu District Court, an inferior jurisdiction rendering judgment without trial by jury and which has exclusive jurisdiction in Hawaii over summary possession cases, in July 1990, and while delaying any adjudication there invoked the RENT TRUST FUND STATUTE and demanded the Petitioners ultimately deposit into District Court $134,650.64 as a

condition for a District Court trial, irrespective of whatever amounts Respondent might owe Petitioners as offsets.

Petitioners, already financially devastated by the breach of the lease agreement by Respondent, were unable to post the amount of the so-called "disputed rent" (which did not factor in the monies that they had spent on leasehold improvements that were reimburseable to them under the lease, although not called "rent" per se), and as an automatic consequence the District Court ordered the Sheriff to evict Petitioners from their manufacturing facility, no matter the fatal, consequential disruption of their manufacturing process, the expensive unbolting of their multi-million-dollar custom machinery, and the displacement of their 100 employees.

Of course, Petitioners had theoretically their remedy of their breach of contract claim in the First Circuit Court, the trial court of general jurisdiction in Hawaii, but as a practical matter their company and then themselves as individuals were thrown into bankruptcy as the claims of creditors and employees mounted against them, with not even any funds to pay further litigation expenses or for this Petition.

Immediately upon being ordered to vacate the premises under the RENT TRUST FUND STATUTE, without a trial or even a probable cause hearing, Petitioners sought relief in the Hawaii Supreme Court, and a stay of the writ of possession, but were denied any relief by the Hawaii Supreme Court, in a unanimous opinion that makes it clear that the RENT TRUST FUND STATUTE in Hawaii is applied and interpreted precisely as challenged here; the

Hawaii Supreme Court found the factual circumstances of these Petitioners *irrelevant*, holding that that Statute could under the Fourteenth Amendment be applied precisely that way, given the unique nature of the landlord-tenant relationship, citing as authority this Court's supposed decision in *Lindsey v. Normet*, 405 U.S. 56 (1972); see full text of Hawaii Supreme Court opinion, set forth in Appendix 2, especially page 11, relying on *Lindsey*.

The federal constitutional issues were raised by Petitioners at *every* stage of the proceedings below.

Petitioners first opposed the application to them of the RENT TRUST FUND STATUTE, by opposing memorandum filed July 19, 1990, "as a matter of state and federal constitutional law", which "would render that statute unconstitutional under the . . . United States Constitution".

And, at every trial court proceeding under the RENT TRUST FUND STATUTE, on which occasions the State District Court Judge felt bound to exclude any evidence of offset or even nonpayment to the Petitioners of contractual leasehold improvement reimbursements, the federal due process and equal protection issues were raised.

Similarly, in the Hawaii Supreme Court all of the federal constitutional issues were expressly addressed in Petitioners' Opening Brief below, both in the question presented to the Hawaii Supreme Court and in legal argument, to wit: "the 1984 Hawaii Rent Trust Fund Statute is clearly unconstitutional on its face, in violation of . . . the United States Constitution, Amendment 14 (exhibited)".

Direct reference to and consideration of the federal constitutional issues can be verified in the opinion of the Hawaii Supreme Court which itself directly considers and rejects that contention, in Appendix 2 of this Petition, page 11 of the Opinion.

III

LEGAL ARGUMENT

The Hawaii RENT TRUST FUND STATUTE is a constitutional *anomaly*. The Hawaii Legislature, in passing this unique law, ignored the traditional notice and opportunity-to-be-heard requirements of the Fourteenth Amendment. And the Hawaii Supreme Court, in turn, has misinterpreted this Court's prior Fourteenth Amendment precedents, becoming lost in an irrelevant discussion of additional remedies in Hawaii law for proving offsets at a later time as somehow justifying obvious constitutional maladies with respect to leasehold possessory rights.

Point 1

The Hawaii Rent Trust Fund Statute on its face and now as applied by the Hawaii Supreme Court is clearly a violation of Fourteenth Amendment Due Process of Law.

Due process of law requires that one be given his or her "day in court" – a meaningful hearing – before being deprived of substantive rights; *Fuentes v. Shevin*, 407 U.S. 67 (1972); *Sniadach v. Family Financial Corp. of Bayview*, 395

U.S. 337 (1969); *Finishing v. Di-Chem*, 419 U.S. 601 (1975). Yet, here, Petitioners were literally kicked out on the sidewalk with their equipment and machinery without any adjudication of substantive rights, rendering a multi-million-dollar investment worthless.

Although, as the Hawaii Supreme Court observed below, in *Lindsey v. Normet*, 405 U.S. 56 (1972), this Court did uphold an Oregon statute that required a rent deposit pending adjudication, that mandatory rent trust deposit was required, not for a trial on the merits, as in Hawaii, but instead only if the tenant required a continuance.

Thus, the same group of Justices that decided *Lindsey* less than four months later, in *Fuentes v. Shevin*, 407 U.S. 67, 85 n.15 (1972), made it clear that such statutes like that presently in Hawaii would be *unconstitutional:*

> These sorts of provisions for recovery of property by posting security are, of course, entirely different from the security requirement upheld in Lindsey v. Normet, 405 U.S. 56, 65. There, the Court upheld a requirement that a tenant wanting a continuance of an eviction hearing must post security for accruing rent during the continuance. The tenant did not have to post security in order to remain in possession before a hearing; rather, he had to post security only in order to obtain a continuance of the hearing. Moreover, the security requirement in Lindsey was not a recovery provision. For the tenant was not deprived of his possessory interest even one day without opportunity for a hearing.

The Hawaii Supreme Court has misinterpreted *Lindsey* and ignored *Fuentes*. There was no hearing allowed below, except for the purpose of fixing the "rent", prior to

*dis*possession. And, moreover, the record shows that the security requirement was not to secure a continuance as the requirement of posting of the disputed rent was entered on the *very day of trial* and trial was denied because the disputed rent could not be posted as ransom, in effect, for a hearing. The order of the State District Court Judge, who openly found his hands tied by an unreasonable law, requiring a *pre*deposit was entered on October 9, 1990, *the same day* that the trial was to commence *if* the deposit were made; see order below, Appendix 1, paragraphs 5 and 6.

Point 2

The Hawaii Rent Trust Fund Statute on its face and now as applied by the Hawaii Supreme Court is clearly a violation of Fourteenth Amendment Equal Protection of the Laws.

It is textbook constitutional law that a State may not discriminate in the affording of its citizens judicial remedies based upon mere ability to pay, yet that is also what the Hawaii RENT TRUST FUND STATUTE does – those who have the ability to deposit disputed rents in Court are allowed to proceed to trial and those who cannot, suffer judgment and eviction without a hearing.

The Hawaii Supreme Court, in its opinion below, sidesteps the equal protection issue by concluding that tenants have an alternative remedy in Hawaii, a suit for damages *after* their rent-trust-fund eviction; see opinion, Appendix 2, page 10. Such second-adjudication relief not only ignores the injury to substantive possessory leasehold rights that the *Fuentes* Court by express words

declared unconstitutional. It overlooks the practical consequences of the RENT TRUST FUND STATUTE, which in this case pushed Petitioners into bankruptcy and made that second adjudicatory right illusory.

IV

CONCLUSION

The proceedings below should be *summarily* reversed as a Fourteenth Amendment violation, and the Hawaii RENT TRUST FUND STATUTE declared *unconstitutional,* and the Hawaii Supreme Court encouraged to return to its earlier pioneering thought which until now has always been at the forefront of due process and equal protection issues, when, for instance, in *Brunswick Corp. v. Galaxy Cocktail Lounge,* 54 Haw. 656, 660, 661-662 (1973), it more clearly saw the need for preserving if not extending post-*Sniadach* developments by requiring at the least probable cause hearings:

> The due process seedling planted by Justice Douglas with regard to pre-judgment garnishment of wages has since matured into a sturdy tree under whose shade debtors have taken respite from the heat of unfair provisional remedies formerly at the disposal of creditors . . . [failing] to provide for prior notice and an opportunity to be heard. . . .

More such constitutional shade is now needed in Hawaii.

Respectfully submitted,

GARY VICTOR DUBIN
Counsel for Petitioners

Honolulu, Hawaii
November 24, 1992

APPENDIX 1

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OCT 9 4 10PM '90

DISTRICT COURT OF
THE FIRST CIRCUIT
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IN THE DISTRICT COURT OF THE FIRST CIRCUIT
HONOLULU DIVISION
STATE OF HAWAII

PAUAHI ASSOCIATES, a Hawaii General Partnership, Plaintiff, vs. MAYFLOWER INTERNATIONAL COMPANY dba HONSEW, INC., a Hawaii General Partnership, HONSEW, INC., a Hawaii Corporation, TSUNG HAI LIN aka THEODORE T.H. LIN and MAY KWONG, Defendants. and JACKSON PACIFIC JOINT VENTURE dba JACKSON CONTRACTORS, a Hawaii Registered General Partnership, Intervenor.	CIVIL NO. H90-2900 ORDER GRANTING PLAINTIFF'S MOTION FOR ESTABLISHMENT OF RENT TRUST FUND

ORDER GRANTING PLAINTIFF'S MOTION FOR ESTABLISHMENT OF RENT TRUST FUND

This Court having considered Plaintiff's Motion for Establishment of Rent Trust Fund, the Memoranda submitted by the parties, the arguments of counsel, the evidence presented, the records and files herein,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. Plaintiff's Motion for Establishment of Rent Trust Fund is granted;

2. On or before September 15, 1990, Defendants shall deposit past due rent, and rent due on September 1, 1990, in the total amount of $134,650.64, which represents the rent from March 1990 to September 1990, inclusive, in the amount of $149,011.64, less Defendants' rental payment of $14,361.00, with the Clerk of the District Court of the First Circuit. The amount of the rent from March 1990 to September 1990 is calculated as follows:

Month	Base Rent	C.A.M.	G.E.T.
March 1990	14,413.85	3,944.00	764.97
April 1990	14,413.85	3,944.00	764.97
May 1990	16,698.00	4,569.00	886.20
June 1990	16,698.00	4,569.00	886.20
July 1990	16,698.00	4,569.00	886.20
August 1990	16,698.00	4,569.00	886.20
September 1990	16,698.00	4,569.00	886.20
	$112,317.70	$30,733.00	$5,960.94

3. Beginning on October 1, 1990 and on the first day of each month thereafter, Defendants shall deposit further rents in the amount of $22,153.20 per month with the

Clerk of the District Court for deposit into the rent trust fund until further order of this Court;

4. All sums deposited with the Clerk shall be deposited by the Clerk into an interest bearing account with a federally insured bank or savings and loan in the State of Hawaii;

5. Pursuant to H.R.S. § 666-21(b), if Defendant is unable to comply with this Order and fails to pay the required amount of rent to the Clerk of the District Court of the First Circuit, the Plaintiff shall have judgment for possession and execution shall issue accordingly; and

6. The trial on Plaintiff's Complaint for Summary Possession shall be scheduled for October 9, 1990 at 9:00 a.m.

DATED: Honolulu, Hawaii, Oct. 9, 1990

TANY S. HONG [SEAL]

/s/ Tany S. Hong
JUDGE OF THE ABOVE
ENTITLED COURT

APPROVED AS TO FORM:

/
Gary Victor Dubin
Attorney for Defendants

APPENDIX 2

NO. 14881

IN THE SUPREME COURT OF THE STATE OF HAWAII

PAUAHI ASSOCIATES, a Hawaii General Partnership, Plaintiff-Appellee, vs. MAYFLOWER INTERNATIONAL COMPANY dba HONSEW, INC., a Hawaii Corporation; TSUNG HAI LIN aka THEODORE T. H. LIN and MAY KWONG, Defendants-Appellants.	CIV. NO. H90-2900 APPEAL FROM THE DENIAL OF DEFENDANTS' DEMAND FOR TRIAL BY JURY, JULY 20, 1990; ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION TO DISMISS COMPLAINT OR TO TRANSFER ACTION TO FIRST CIRCUIT COURT, OR TO STAY ALL PROCEEDINGS, JULY 30, 1990; ORDER GRANTING PLAINTIFF'S MOTION FOR RELIEF FROM THE ORAL ORDER GRANTING PLAINTIFF'S MOTION FOR ESTABLISHMENT OF RENT TRUST FUND, OCTOBER 9, 1990; ORDER GRANTING PLAINTIFF'S EX PARTE MOTION FOR ISSUANCE OF JUDGMENT FOR POSSESSION AND WRIT OF POSSESSION, OCTOBER 9, 1990; JUDGMENT FOR POSSESSION, OCTOBER 9, 1990. DISTRICT COURT OF THE FIRST CIRCUIT

MEMORANDUM OPINION

(Filed Aug. 26, 1992)

The defendants-appellants Mayflower International Company, DBA Honsew (Honsew), Tsung Hai Lin, aka Theodore T. H. Lin (Lin), and May Kwong (Kwong) (collectively the defendants)[1] appeal from a judgment for possession in favor of Pauahi Associates (Pauahi), the landlord of a commercial space in the Maunakea Marketplace. On appeal, the defendants challenge the constitutionality of Hawaii Revised Statutes (HRS) § 666-21,[2]

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[1] Honsew is a general partnership which leased the subject property. Lin and Kwong guaranteed the lease by executing a guaranty agreement dated May 26, 1989.

[2] HRS § 666-21 (1985) provides in relevant part:

> *Rent trust fund.* (a) *At the request of* either the tenant or *the landlord in any court proceeding in which the payment or nonpayment of rent is in dispute, the court shall order the tenant to deposit any disputed rent as it becomes due into the court as provided under subsection (c),* and in the case of a proceeding in which a rent increase is in issue, the amount of the rent prior to the increase; provided that the tenant shall not be required to deposit any rent where the tenant can show to the court's satisfaction that the rent has already been paid to the landlord; provided further that if the parties had executed a written instrument agreeing that the rent could be withheld or deducted, the court shall not require the tenant to deposit rent into the fund. *No deposit of rent into the fund ordered under this section shall affect the tenant's right to assert* either that payment of rent was made or *that any grounds for nonpayment of rent exist under this chapter.*
>
> (b) *If the tenant is unable to comply with the court's order under subsection (a) in paying the required amount*

which, at the request of either the tenant or the landlord, requires tenants to deposit any disputed rent into a "rent trust fund" pending judicial disposition of the dispute. We conclude that the appeal is without merit and affirm the judgment for possession.

I.

Pauahi and Honsew entered into a commercial lease dated May 26, 1989, whereby Pauahi leased Honsew a commercial space in the Maunakea Marketplace. A dispute occurred because the leased premises were not completed to the satisfaction of Honsew, who in turn did not pay several months rent. Pauahi filed suit against the defendants, *inter alia,* for summary possession of the leased premises, termination of the lease, and for the rent amounts allegedly due and owing. The district court

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of rent to the court, the landlord shall have judgment for possession and execution shall issue accordingly. . . .

(c) *The court in which the dispute is being heard shall accept and hold in trust any rent deposited under this section* and shall make payments out of money collected as provided in this section. *The court shall order payment* of the money collected or portion thereof *to the landlord if the court finds* that the rent is due and has not been paid to the landlord and *that the tenant did not have any basis to withhold, deduct, or otherwise set off the rent not paid. The court shall order payment* of the money collected or portion thereof *to the tenant if the court finds* that the rent is not due or has been paid, or *that the tenant had a basis to withhold, deduct, or otherwise set off the rent not paid.*

(Emphasis added.)

retained the summary possession issue, and the claim for rental damages on the lease was bifurcated and transferred to circuit court for a jury trial. Although the record is unclear in this regard, the circuit court proceeding is apparently still pending.[3]

Pauahi moved the district court for the establishment of a rent trust fund, and on August 29, 1990, pursuant to HRS § 666-21(a), the district court ordered Honsew to deposit $134,650.64, representing rental amounts through September 1990, into the rent trust fund, plus rent payments for all subsequent months as they became due under the terms of the lease. Because Honsew failed to make the ordered deposits, the district court entered judgment for possession in Pauahi's favor. The defendants appealed.

II.

The issue before us on appeal is whether HRS § 666-21 (1985) is violative of the defendants' due process and equal protection rights because it allegedly requires a deposit of disputed rent amounts into a rent trust fund as a precondition to a determination of the rights and obligations of the parties with respect to disputed rent payments and, in particular, to the adjudication of various defenses and offsets proffered by the defendants.

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[3] It would be an understatement to say that the record in this case is a shambles.

III.

A.

HRS § 666-21 (1985) is a vehicle for determining the rights and obligations of landlords and tenants who are parties to lease agreements with respect to disputed rent amounts. If the tenant does not deposit the required rent amounts into the trust fund, HRS § 666-21(b) directs the district court to grant the landlord summary possession, consistent with the statutory framework established by HRS chapter 666, and, in particular, HRS §§ 666-1[4] and 666-6.[5] The district court has exclusive jurisdiction over the issue of summary possession. *Kimball v. Lincoln*, 72 Haw. 117, 125, 809 P.2d 1130, 1134 (1991).

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[4] HRS section 666-1 (1985) provides:

> *Summary possession on termination or forfeiture of lease.* Whenever any lessee or tenant of any lands or tenements, or any person holding under the lessee or tenant, holds possession of lands or tenements without right, after the termination of the tenancy, either by passage of time or by reason of any forfeiture, under the conditions or covenants in a lease, or, if a tenant by parol, by a notice to quit of at least ten days, the person entitled to the premises may be restored to the possession thereof in [a] manner hereinafter provided.

[5] HRS section 666-6 (1985) provides:

> *Summary possession proceedings; venue.* In the case of summary possession proceedings, the person entitled to the possession of the premises shall bring and prosecute the person's action *in the district court* of the circuit wherein the lands and premises in question are situated.

(Emphasis added.)

The right to summary possession is distinct from the issue of a tenant's defenses and claims of offsets to claimed rent. Offsets and defenses to claims of rent amounts due and owing, which are damage issues, are subject to circuit court jurisdiction. HRS § 666-21 (1985) does not preclude any party from bringing an action in circuit court for the adjudication of such issues.[6] The defendants in fact commenced just such an action in the First Circuit Court on May 9, 1990, in Civil No. 90-1433-05. *See* Exhibit 1, attached to Defendants' Motion to Dismiss Complaint or to Transfer Action to First Circuit Court, or to Stay All Proceedings. (R.A. Vol. 1, at 77-125). Moreover, as noted above, the district court transferred the defendants' damage claims to the circuit court for trial by jury. Accordingly, the defendants have an opportunity to adjudicate their claims of offset and other defenses to the rent dispute in the correct forum.

B.

"The basic elements of procedural due process of law require notice and an opportunity to be heard at a meaningful time and in a meaningful manner before governmental deprivation of a significant property interest." *Sandy Beach Defense Fund v. City Council*, 70 Haw. 361, 378, 773 P.2d 250, 251 (1989) (citation omitted). The defendants have not been deprived of due process protection in this

---

[6] HRS § 666-21(a) provides in relevant part that "[n]o deposit of rent into the fund ordered under this section shall affect the tenant's rights to assert either that payment of rent was made or that any grounds for nonpayment of rent exist under this chapter."

case. They have been accorded an opportunity to be heard of the issues of defenses and offsets in the circuit court.

C.

The Hawaii Supreme Court has held that, for purposes of equal protection analysis, unless there is a suspect classification or fundamental rights are implicated, the applicable standard of review is the rational basis standard. *Sandy Beach Defense Fund v. City Council,* 70 Haw at 380, 773 P.2d at 262. In this case, the defendants are apparently arguing that HRS § 666-21 (1985) makes an unconstitutional distinction between those tenants who can make the required rental deposit and those who cannot. Their rationale seems to be that they have been denied the equal protection of the laws because Pauahi's right to summary possession has been adjudicated before the resolution of their defenses and alleged offsets to any rents due and owing.

The distinction alleged by the defendants is an artificial one. It is not really a "classification" for equal protection purposes. Whether the tenant pays into the rent trust fund does not substantively affect the only adjudication that the district court has jurisdiction to make – the landlord's right to summary possession. The circuit court is the proper forum in which to resolve the tenant's defenses and claims of offsets. Nothing in HRS § 666-21 (1985) prevents them from doing so. And, as indicated, there appears to be at least one (and possibly two) circuit court proceeding(s) pending in which these claims can be adjudicated.

Additionally, the United States Supreme Court has already upheld the constitutionality of depositing disputed amounts into a fund pending adjudication of the substantive issues. In *Lindsay v. Normet*, 405 U.S. 56 (1972), the United States Supreme Court upheld the constitutionality of the Oregon Forcible Entry and Wrongful Detainer Statute, which requires the tenant to deposit accruing rent into a fund pending settlement of a dispute with the landlord. The *Lindsay* Court noted that there is a unique relationship between a landlord and a tenant that justifies allowing special procedures to effect a speedy adjudication of disputes. Inasmuch as the tenant is in possession of property belonging to the landlord, there must be some expeditious judicial mechanism allowing the landlord to repossess his property where the tenant has defaulted on the lease. Thus, the Court concluded that Oregon was well within its constitutional powers in providing for a rapid and peaceful settlement of landlord-tenant disputes. *Id.* at 72-73.

Accordingly, we conclude that the defendants have failed to demonstrate that HRS § 666-21 (1985) violates the equal protection clauses of the fourteenth amendment to the United States Constitution and article I, § 5 of the Hawaii Constitution.

IV.

We therefore affirm the district court's judgment for possession in favor of Pauahi.

DATED: Honolulu, Hawaii, August 26, 1992.

Gary Victor Dubin,
on the briefs for
appellants.

Roy T. Ogawa, A. Debbie
Jew and Linda R. Kobuke
(Oliver, Lee, Lawhn, Ogawa
and Lau) on the brief for
appellee.

/s/ Herbert T.F. Lum

/s/ James H. Watkatsuki

/s/ Ronald T.Y. Moon

/s/ Robert G. Klein

/s/ Steven H. Levinson

APPENDIX 3

§ 666-21 Rent trust fund (Hawaii Revised Statutes)

(a) At the request of either the tenant or the landlord in any court proceeding in which the payment or nonpayment of rent is in dispute, the court shall order the tenant to deposit any disputed rent as it becomes due into the court as provided under subsection (c), and in the case of a proceeding in which a rent increase is in issue, the amount of the rent prior to the increase; provided that the tenant shall not be required to deposit any rent where the tenant can show to the court's satisfaction that the rent has already been paid to the landlord; provided further that if the parties had executed a written instrument agreeing that the rent could be withheld or deducted, the court shall not require the tenant to deposit rent into the fund. No deposit of rent into the fund ordered under this section shall affect the tenant's rights to assert either that payment of rent was made or that any grounds for nonpayment of rent exist under this chapter.

(b) If the tenant is unable to comply with the court's order under subsection (a) in paying the required amount of rent to the court, the landlord shall have judgment for possession and execution shall issue accordingly. The writ of possession shall issue to the sheriff or to a police officer of the circuit where the premises are situated, ordering the sheriff or police officer to remove all persons and possessions from the premises, and to put the landlord, or the landlord's agent, into full possession of the premises.

(c) The court in which the dispute is being heard shall accept and hold in trust any rent deposited under

this section and shall make payments out of money collected as provided in this section. The court shall order payment of the money collected or portion thereof to the landlord if the court finds that the rent is due and has not been paid to the landlord and that the tenant did not have any basis to withhold, deduct, or otherwise set off the rent not paid. The court shall order payment of the money collected or portion thereof to the tenant if the court finds that the rent is not due or has been paid, or that the tenant had a basis to withhold, deduct, or otherwise set off the rent not paid.

(d) The court, upon finding that either the landlord or the tenant raised the issue of payment or nonpayment of rent in bad faith, shall order that person to pay the other party reasonable interest on the rent deposited into the trust.

APPENDIX 4

Fourteenth Amendment to U.S. Constitution

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.